REMARKS

Claims 18-21 currently are pending in this application. No new matter has been added. Reconsideration is respectfully requested in view of the following remarks.

Applicants' Response to §103 Rejection over Hager in view of McDonald and LMC International

Claims 18-21 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 4,975,288 to Hager et al. (hereinafter "Hager") in view of U.S. Patent No. 3,062,662 to McDonald (hereinafter "McDonald") and "LMC International Unveils Market's fastest ball lollipop machine" (hereinafter "LMC International"). Applicants respectfully traverse this rejection on the grounds that the Examiner has failed to establish a *prima facie* case of obviousness. The references include no motivation to modify or combine the references, the teachings are not properly combinable, and even if combined, the references fail to teach the invention as claimed. Therefore, reconsideration and withdrawal of the rejection is respectfully requested.

The Examiner admits that Hager fails to disclose Applicant's coating and placement of the lollipop stick steps. However, according to the Examiner, these steps were rendered obvious by McDonald and LMC International. The Examiner alleges:

> McDonald's dip coating procedures results substantially equivalent to applicant's claimed "molding around" step since molding molten candy around a chewing gum product envelopes the product with the candy, and dip coating, as occurs in McDonald, also envelopes the gum product with a candy coating. Further, the fact that the applicant's molding or coating step is performed continuously as opposed to batchwise, as in McDonald, is not an unobvious advance in the art since it is obvious to perform a batch process continuously or a continuous process in a batchwise manner.
>
> (Office Action of June 15, 2006, at Page 2-3) (citations omitted).

The "Basic Requirements of a *Prima Facie* Case of Obviousness" can be found in M.P.E.P §2143. According to these requirements, the following are necessary to establish a *prima facie* case of obviousness: (1) a reference or combination of references must provide some suggestion or motivation to modify the reference or to combine the teachings; (2) there must be a reasonable expectation of success; and (3) there must be a teaching or suggestions of all claim limitations. In addition, the teachings must consider the reference as a whole and the proposed modification cannot render the prior art unsatisfactory for its intended purpose.

The combination of Hager, McDonald and LMC International fails to establish a *prima facie* case of obviousness because (1) there is no motivation to combine the references, (2) there is no reasonable expectation of success and (3) there is not a teaching or suggestion of all claim limitations.

Important aspects of the requirements for motivation to combine and expectation of success are that both must come from the prior art and not from the disclosure of the present invention. According to MPEP §2143, "[t]he teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure."

Given the numerous references that are combined by the Examiner, the Applicants first point out what each of the references teaches and then point out the reasons why the combination fails to provide a *prima facie* case of obviousness under Section 103.

Nowhere in Hager, McDonald or LMC International are such steps of extruding a rope of gum material into a tubular member, injecting center-fill semi-liquid material into the rope of gum material and continuously molding molten candy material around the tubular member and gum material to form a candy coated center-filled gum material which are formed into three-material lollipops disclosed, taught or suggested.

The primary reference, Hager, discloses a method for preparing a center-filled chewing gum which provides an advantage over prior methods of preparing center-filled gums in that the gum pieces may include 35-40% by weight center-fill. This reference is directed to teaching a superior method of preparing center-filled chewing gum since prior methods could only achieve 12-17% by weight center-fill. However, Hager fails to contain any disclosure or suggestion of candy coating its center-filled gum material. Moreover, nowhere in Hager is there any suggestion to continuously molding candy around its center-filled gum and then place a lollipop stick therein. As such, Hager focuses on the advantages of its method for preparing a center-filled chewing gum and provides no motivation or suggestion to create a three-material lollipop as described in the present claims.

The first secondary reference, McDonald, discloses a combination bubble gum and candy sucker. The process disclosed involves heating candy material until it is a hot syrup. The individual chewing gum pieces, which each include a stick, are dipped into the hot syrup once or twice to obtain the desired amount of candy thereon. (McDonald; Col. 2, lines 14-23 and 37-39). Although the Examiner asserts that it would have been obvious to candy coat the center-fill gum of Hager in view of McDonald, McDonald is completely devoid of any disclosure relating to the candy coating process recited in Applicants' claims.

McDonald specifically states that "it is necessary to *dip* the bubble gum into the hot candy syrup sufficiently so that the bubble gum will partially melt and soften and mix with the candy". (McDonald, col. 2, ll. 53-55) (emphasis added). Moreover, McDonald specifies that the coating is applied by first placing the stick in the gum, then dipping the gum into the candy and finally allowing it too cool on a flat surface. Not only is there no teaching to provide the lollipop in a ball shape as described in the claims above, McDonald teaches away from any other shape which would result from drying on a flat surface. (*See* McDonald col. 2, ll. 46-48, requiring a flat edge because it is "a particularly desirable shape for the confections as it enables the same to be advantageously displayed for sale.")

Nowhere in McDonald is there any suggestion to continuously mold molten candy around a tubular member and gum material as disclosed in Applicants' claims. As stated above, the Examiner alleges that dipping and molding are "substantially equivalent". However, dipping individual pieces of chewing gum is an entirely separate process than the continuous molding of a tubular member as described in the claimed process. As set forth in McDonald, "the *impaled* bubble gum 11 is dipped once or twice in the syrup and the dipped product is positioned on a *flat* surface" (*See* McDonald col. 2, ll. 38-40.) (emphasis added). Therefore, the stick is added to the gum material *prior* to dipping the gum and is imperative to the dipping process. Moreover, the dipping step of McDonald inevitably produces a bell-shaped end-product and not a lollipop ball. The required dipping step therefore teaches away from molding candy around the gum material, since one of ordinary skill in the art would be discouraged from using the teachings of McDonald to create a method for forming a three-material lollipop that includes the steps of continuously molding candy material around a tubular center-filled gum material that lacks a stick and forming center-filled lollipop balls from a rope of candy-coated center-filled chewing gum.

In contrast, Applicants' claimed process requires continuously molding molten candy material around an extruded center-filled gum material, which is typically referred to as a "rope". In particular, molten candy material is molded around the tubular member and extruded gum material as it proceeds through the batch forming mechanism. Individual lollipop *balls* are subsequently formed from the three-phase material, i.e., candy coated, center-filled gum material.

McDonald fails to contain any disclosure or suggestion of such a process for molding candy material around an extruded gum material and subsequently forming lollipop balls therefrom. Moreover, there is no suggestion in McDonald to modify its teachings to continuously mold the candy material around the gum. Furthermore, there is no suggestion in MDonald to modify its teachings to continuously mold candy around a center-filled *rope* of chewing gum. McDonald merely relates to coating individual, pre-formed chewing gum *pieces*, which involves **entirely** different processing concerns from the present invention. The process

of the present invention includes an extruder that extrudes a *rope* of gum that is then injected with the center-fill material. This entire length of center-filled rope is then sent through a tube whereby molten candy is molded around the entire length of the center-filled rope of chewing gum. It is at this point that the center-filled rope of chewing gum is then sized and formed into a lollipop. Extrusion of a rope of center-filled chewing gum and molding candy around the continuously extruded rope is completely different from simply dipping an impaled piece of chewing gum into syrup. For example, one skilled in the art could not practice McDonald without first impaling the chewing gum. Moreover, one skilled in the art could not practice the present if the rope of chewing gum was impaled with a stick prior to having the candy applied to the outer surface of the gum. Therefore, one skilled in the art would have absolutely no motivation to combine Hager with the simple step of dipping an *impaled piece* of chewing gum into syrup as disclosed in McDonald to develop the process of making a three-material lollipop as disclosed in the present invention.

LMC International was merely cited for its disclosure of lollipops in the form of balls and fails to provide any disclosure of relevance to a process for continuously molding candy around chewing gum material. Furthermore, LMC International fails to even suggest using chewing gum or center-filled chewing gum. Neither Hager nor McDonald suggests a candy coated center-filled gum of the present invention, let alone a three material lollipop. One skilled in the art would have no reason to look to combine Hager and McDonald with this reference to develop the three-material lollipop as described above. Hence, LMC International fails to cure the deficiencies of Hager and McDonald in this regard.

The method of Hager is not itself compatible with McDonald or LMC International. To combine the teachings of Hager with either of the recited secondary references is improper absent a showing of motivation to combine. In this case, not only is there no motivation to combine, but any attempts to combine would require changes to Hager which would destroy the references' intent and purpose. Hager does not suggest or disclose continuously molding a candy coating around a rope of center-filled chewing gum. McDonald merely discloses *dip*

coating an individual *piece* of chewing gum, not a rope of center-filled chewing gum. Nowhere in McDonald is continuously molding candy materials around a rope of center-filled gum disclosed, taught or suggested. LMC was merely cited for the formation of lollipops and adds nothing to either of the references. Therefore any rejection based on the motivation to combine these references is impermissible hindsight reconstruction. Such motivation must come from the prior art itself, and not from the Applicants' disclosure. The cited references contain no disclosure, teaching or suggestion of continuously molding candy material around a center-filled gum material.

For the reasons set forth above, there is no motivation in any of the references to combine the teachings of each. Furthermore, the references do not teach all the steps required by the present invention. Thus, any combination of the cited references would subsequently lack these required steps. Even if combined, the references would neither lead one of ordinary skill in the art to prepare the invention of the present claims nor could you reach the invention of the present claims.

In view of the above, the combination of Hagar, McDonald and LMC International fails to disclose or suggest Applicants' claim 18, as amended herein. Applicants respectfully submit that amended claim 18, and thus claims 19-21 which depend therefrom, are patentable over Hagar, McDonald and LMC International, each taken alone or in combination and are in proper form for allowance. Reconsideration and withdrawal of the Section 103 rejection is respectfully requested.

Applicants submit that the claims are patentable over the prior art and in proper form for allowance. Favorable action is respectfully requested.

No fees are believed to be due with this amendment. However, the Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes

authorization to charge fees for extensions of time, if any, under 37 C.F.R § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

Respectfully submitted,

Nichole E. Martiak

Nichole E. Martiak
Registration No.: 55,832
Attorney for Applicants

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(973) 331-1700